

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC.; WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.;  
and SIERRA CLUB,**

**Plaintiffs,**

**and**

**APPALACHIAN HEADWATERS, INC.,**

**Nonparty in whose favor an order has been entered,**

**v.**

**ERP ENVIRONMENTAL FUND, INC.,**

**Defendant,**

**and**

**VCLF LAND TRUST, INC.**

**Nonparty against whom an order may be enforced.**

**STATUS REPORT**

On November 19, 2019, the Court indefinitely continued the briefing deadlines on the amount of an award of attorney fees and costs associated with the Second Motion to Enforce the Second Modified Consent Decree and Selenium Settlement Agreement and Award Attorney's Fees. CM/ECF #180. The Court further directed the Parties to submit a status report to the Court on the need for further briefing on that issue. Id. Counsel for Plaintiffs has conferred with counsel for Defendant and submits this Status Report pursuant to the Court's November 19, 2019 Order.

On December 6, 2019, the Parties executed an agreement that will resolve Plaintiffs' request for attorney fees and costs without the need for further litigation on the issue so long as Defendant performs certain duties under the agreement on or before December 23, 2019. If Defendant fails to

perform those duties, however, there may be a need for additional briefing on the amount of a fee award. Accordingly, the Parties respectfully request that the Court maintain the indefinite continuance of the briefing deadlines set out in the Court's November 4, 2019 Memorandum Opinion and Order (CM/ECF #173) and direct the Parties to submit an additional status report on January 3, 2020.

Respectfully submitted,

/s/ Derek O. Teaney

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**CERTIFICATE OF SERVICE**

I, Derek O. Teaney, do hereby certify that on December 6, 2019, I electronically filed the foregoing document the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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Counsel for Defendant ERP Environmental Fund  
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/s/ Derek O. Teaney  
DEREK O. TEANEY (W. Va. Bar No. 10223)